



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,762	02/28/2002	Robert Groten	22750/434A	1346

26646 7590 07/31/2003

KENYON & KENYON  
ONE BROADWAY  
NEW YORK, NY 10004

EXAMINER
----------

DEL SOLE, JOSEPH S

ART UNIT	PAPER NUMBER
----------	--------------

1722

DATE MAILED: 07/31/2003

3

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

10/086,762

Applicant(s)

GROTEN ET AL.

Examiner

Joseph S. Del Sole

Art Unit

1722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13-18 is/are pending in the application.
- 4a) Of the above claim(s) 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 13-18 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☒ Certified copies of the priority documents have been received in Application No. 09/515,866.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 13-17, drawn to a die plate, classified in class 425, subclass 131.1.
  - II. Claim 18, drawn to a filament, classified in class 428, subclass 373.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions of groups I and II are related as apparatus and product made. The inventions in this relationship are distinct if either or both of the following can be shown:

(1) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a different product or (2) that the product as claimed can be made by another and materially different apparatus (MPEP § 806.05(g)). In this case the apparatus as claimed is not an obvious apparatus for making the product and the apparatus as claimed can be used to make a different product such as a side by side bicomponent fiber.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Mr. Richard Rosati (31,792) on 10/31/2002 a provisional election was made with traverse to prosecute the invention of Group I, claims 13-17. Affirmation of this election must be made by applicant in replying to this Office action. Claim 18 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Art Unit: 1722

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Information Disclosure Statement***

6. The information disclosure statement filed 2/28/02 complies with the provisions of 37 CFR 1.97, 1.98 and MPEP 609. It has been placed in the application file and the information referred to therein has been considered as to its merits.

***Claim Objections***

7. Claim 17 is objected to because of the following informalities: a) "less then or equal" at line 5 of claim 17 should be changed to --less than or equal--. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 13 and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Proulx (5,814,176).

Proulx teaches a die (Fig 1, #28) having a polymer source (Fig 1, #20); a die in communication with the polymer source; a die plate (Fig 6) in fluid communication with

Art Unit: 1722

the die, the die plate defining a first group of openings (Fig 8), the first group of openings having a first opening and a second opening, the first opening and the second opening configured to form a first elementary fiber having a skin and a second elementary fiber having a skin (Fig 8); the die plate defines a second group of openings, the second group having a third opening and a fourth opening, the third opening and the fourth opening configured to form a third elementary fiber having a skin and a fourth elementary fiber having a skin (Fig 8); a die plate having a first opening and a second opening, the distance between the first opening and the second opening is equal to or greater than a quarter of the sum of the diameters of the first opening and the second opening and the distance between the first opening and the second opening is less than or equal to the sum of the diameters of the first opening and the second opening (col 3, line 62 - col 4, line 16).

### ***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

13. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Proulx (5,814,176) in view of Schrenk (3,607,509).

Proulx teaches the apparatus as discussed above.

Proulx fails to teach a second polymer source in communication with the die.

Schrenk teaches an apparatus having a second polymer source (Fig 1, and col 2, line 68 - col 3, line 14) for the purpose of forming a composite product bonded filaments (Fig 9 and col 4, lines 30-41).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of Proulx with a second polymer source as taught by Schrenk because it enables a bonded filaments product to be formed of a plurality of polymers.

14. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Proulx (5,814,176) in view of Kamp (4,540,537).

Art Unit: 1722

Proulx teaches the apparatus as discussed above.

Proulx fails to teach a second polymer source in communication with the die.

Kamp teaches an apparatus having a second polymer source (Fig 4, #41) for the purpose of forming a composite product (Fig 4 and col 4, lines 1-4).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of Proulx with a second polymer source as taught by Kamp because it enables a composite product to be formed.

### **Correspondence**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph S. Del Sole whose telephone number is (703) 308-6295. The examiner can normally be reached on Monday through Friday from 8:30 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wanda Walker, can be reached at (703) 308-0457. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310 for non-after finals and (703) 872-9311 for after finals.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

J.S.D.  
July 22, 2003

Joseph S Del Sole

ROBERT DAVIS  
PRIMARY EXAMINER  
GROUP 1300-1700

7/28/03